IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02/12/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.OP. 36984 of 2004

Dr.L.Prakash ...Petitioner

-vs-

State rep. by
The Assistant Commissioner of Police
R-8, Vadapalani Police Station
Chennai ...Respondent

Petition filed under section 482 Cr.P.C. to call for the records and quash the charge No.5 framed against the petitioner under section 3 76 IPC in SC.No.9/2004 now pending on the file of the IV Fast Track Court Judge, Chennai.

For Petitioner : Mr.J.Mahalingam

For respondent : Mr.V.Arul Govt. Advocate (Crl.Side)

:ORDER

This petition has been filed under Section 482 Cr.P.C. praying to call for the records and quash the charge No.5 framed against the petitioner under Section 376 IPC in SC.No.9/2004 now pending on the file of the IV Fast Track Court Judge, Chennai.

2. Today, when the above matter was taken up for consideration in the presence of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent what this Court is apprised of is that even prior to the framing of the charge, the person named in charge No.5 as a victim, namely one Asha died of committing suicide and learned counsel for the petitioner would further state that without her evidence, based on only 161 Cr.P.C. statement recorded by the police, no case would be made out in the present conditions so far as charge No.5 is concerned and therefore, would seek to quash this charge in S.C.No.9/2004 which is pending trial before the trial Court.

3. On the part of the learned Government Advocate (Crl. side) he would argue to the effect that it is not only the statement given by the deceased Asha to the police recorded under section 161 Cr.P.C. but also her statement recorded under Section 164 Cr.P.C. by the Magistrate are available

and therefore in these circumstances, it is not a case wherein based on the death of the witness, the case would go and it is up to the trial Court to consider all these factors during trial wherein the entire facts and circumstances of the case in the light of the available evidence would analysed and therefore, would strongly oppose this application.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is of the view that it is up to the trial Court to decide on a overall consideration of all those materials which are made available on record and on such of the evidence collected through other sources whether oral and documentary and it is not up to this Court to decide based on only the report of the death of the witness or the Sec. 161 statement recorded conclusions could be drawn and therefore, it is only desirable to dismiss the above criminal original petition and the same is ordered accordingly.

In result,

i) the above criminal original petition does not merit acceptance but only becomes liable to be dismissed and is dismissed accordingly.

Index: Yes
Internet : Yes

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To

1. The Assistant Commissioner of Police
R-8, Vadapalani Police Station
Chennai
2. The IV Fast Track Court Judge, Chennai.
3.The Public Prosecutor, High court, Madras

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